IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

(1)Sohan Singh vs. Judge,Industrial Tribunal-cum- Labour Court & Ors.
(S.B.C.Writ Petition No.865/2005)

(2)Bhoor Singh vs. Judge,Industrial Tribunal-cum- Labour Court & Ors.
(S.B.C.Writ Petition No.832/2005)

(3) Madan Singh vs. Judge,IndustrialTribunal-cum- Labour Court &Ors.
(S.B.C.Writ Petition No.1408/2004)

(4)L.Rs. Of Sajjan Singh vs. Judge,Industrial Tribunal-cum- Labour Court & Ors.
(S.B.C.Writ Petition No.1797/2004)

(5)Devi Singh vs. Judge,Industrial Tribunal-cum- Labour Court & Ors.
(S.B.C.Writ Petition No.6959/03)

(6)Harka Ram vs. Judge,Industrial Tribunal-cum- Labour Court & Ors.
(S.B.C.Writ Petition No.2596/2002)

Dated:- 16th October, 2006.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. S.K.M.Vyas,Advocate for the petitioner.
Mr.R.K.Singhal }
Mr.Ravi Bhansali)
Mr.Manoj Bhandari} Advocates, for the respondents.

BY THE COURT :-

REPORTABLE

Since all the aforesaid writ petitions raise a common question of law based on similar facts, they were taken up together for hearing and therefore are being decided by a common judgment. For convenience however, facts of only one case namely, S.B.C.Writ Petition No. 1408/04 Madan Singh vs. The Judge, Labour Court & Ors. are being referred to.

The petitioners who were all working with the erstwhile Rajasthan State Electricity Board (for short "management") submitted their claim before the Joint Labour Commissioner of the State of Rajasthan complaining that even though they were actually working on the post of vehicle driver, the management has not given them the status of vehicle driver and was not making payment of their salary on the aforesaid post. On receipt of the failure report, the appropriate government by order dated 24th December, 1996 made a reference to the Labour Court,Jodhpur on the question whether action of the respondents in not regularising services of the workmen on the post of vehicle driver after they have rendered services of one year on such post and not making payment of the salary and other allowances of such post was legally justified and if not, what relief the workmen Devi Singh, Girdhari Singh, Sohanlal, Sultan Singh, Narpat Singh, Ganpat Singh, Rameshwar Lal, Madan Singh, Dhanna Ram, Sajjan Singh, Kalu Ram, Bhoor

Singh were entitled to. While the first five writ petitions have been filed against common award dated 14th February, 2003 arising out of the said reference made on 24th December, 1996, facts in the case of Harka Ram vs. R.R.V.P.N. Ltd.(S.B.C.Writ Petition No.2596/02) are slightly different although substantially similar issues are raised in that case too.

The workmen in their statement of claim filed before the learned Labour Court maintained that even though their initial appointment was made on the post of Helper but in view of the fact that they possess the driving license and know how to drive the vehicles, the management has been taking from them work of vehicle driver. But the management is not paying their salary according to scale no. 3 which is applicable to that post. This action of the management was contrary to the terms of the settlement arrived at between the management and the workers on 22/23rd April, 1971. According to this settlement, if a workman has worked more than one year on the post of vehicle driver, he would be eligible for appointment on the post of vehicle driver and after completion of one year, he shall be granted benefit of salary and pay fixation of the said post . Even though all these workmen have been discharging duties of vehicle driver for a very long period and have been repeatedly requesting the respondents to grant them the salary and

allowances on the post of vehicle driver, the management has not redressed their grievances. In these circumstances, the workmen had to file a writ petition before this Court. This Court however dismissed the writ petition on the ground of availability of alternative remedy before the Labour Court under the Industrial Disputes Act, 1947. It was stated that the aforesaid settlement was still in force and pursuant to the terms of the said settlement, one Kalyan Mal Saini who was earlier helper was granted the benefit of pay scale and was appointed on the post of vehicle driver vide order dated 31.3.1990 w.e.f. March, 1980. Similarly, other helpers namely Prema Ram, Ram Dhan and Pema Ram were also granted the same benefits of the post of vehicle driver from the year 1987. Reference was made to the cases of Bajrang Singh, Kaisar Singh and Surja Ram Jat who were also granted the status of vehicle driver and salary and allowances attached to the said post by Superintending Engineer (TCS), Rajasthan Rajya Vidhyut Nigam, Ajmer. Similarly workmen Chagan Lal and Babu Singh were also allowed such benefits after completion of one year while working as vehicle driver. Reference was also made to the case of one Shivcharan Lal Soni in whose favour an award was passed by the Industrial Tribunal.

It would be significant to note that when reference

proceeding were pending before learned Labour Court, the benefit of pay scale of the post of vehicle driver was extended to nine workmen but the petitioner's case is that such benefit was not granted according to the terms of the settlement. These workmen were granted benefit of pay scale w.e.f. 12.5.1992 whereas they were entitled to receive the same immediately after completion of one year's working on the post of vehicle driver.

The claim of the workmen was contested by the management which in its reply to writ petition has submitted that the settlement dated 22/23.4.1971 has been duly terminated by the management by service of notice u/s 19(2) of the Industrial Disputes Act, 1947 . Already pay of the post of vehicle driver has been granted to the workmen from May, 1992 on the recommendation of the screening committee. The appropriate government was therefore not justified in making reference to the Labour Court in the year 1995. Workmen whose details have been furnished in the statement of claim on the ground of parity have not been impleaded as party respondent before the Labour Court. The Screening Committee was constituted by the management only because the settlement dated 22/23.4.1971 has come to an end. It was therefore submitted that claim submitted by the workmen was

required to be rejected and reference answered accordingly.

After hearing the arguments of the parties and consideration of the evidence on record, the Labour Court held that settlement dated 22/23.4.1971 which was relied upon by the workmen has since been terminated. Besides, the learned Labour Court referred to the statement of one Sultan Singh in which he admitted that he did not regularly drive the vehicle and therefore his case was not recommended by the Committee. Learned Labour Court as regards the award passed in the similar matters took a view that these awards were not binding upon it because each of the awards were passed in the facts and on the basis of evidence led in a given case. According to the learned Labour Court when the very foundation of raising claim namely the settlement itself has seized to exit, there was no basis now to entertain the claim of the workmen.

So far as the case of Harka Ram is concerned, the Labour Court in its award concluded that it was not proved that he was regularly working on the post of vehicle driver. It was held that the workman also failed to prove that any of the workmen was made vehicle driver merely on the basis of the fact that he had driven the vehicle of the management for one year. In this case also, the factor which ultimately weighed with the learned Labour Court in rejecting the claim was that the

settlement dated 22/23.4.1971 has been terminated by the management vide notice dated 13th January, 1981 and therefore the very foundation of the claim stands dislodged. Thus the learned Labour Court answered the reference in both the cases in negative thereby rejecting the claim of the workmen.

I have heard Mr.S.K.M. Vyas, learned counsel for the petitioner and Mr.Ravi Bhansali, Mr.R.K.Singhal and Mr. Manoj Bhandari, learned counsel for the respondents and perused the record.

Learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in the case of Life Insurance Corporation of India vs. D.J.Bahadu reported in 1981 (1) SCC p.315 and argued that in spite of the fact that the management has served a notice for termination of the settlement dated 22/23.4.1971, the conditions of service as contained in the settlement would continue to apply and the settlement for that purpose would subsist even after service of such notice. Learned counsel further argued that the learned Labour Court was swayed away by the defence of the management that the agreement/settlement had been withdrawn/terminated by them and on that account, the learned Labour Court has not even considered the case on merits and

has not correctly analysed the evidence on record. Learned counsel for the petitioner has referred to some of the statements of the defence witnesses who have admitted that the workmen had been working on the post of vehicle driver over a long period of time. He has invited my attention to the statement of one Shyam Sunder, the witness of the management whose statement has been placed on record as Annexure 4 in S.B.C.Writ Petition No.6959/03. He in his cross-examination admitted that Devi Singh and Sultan Singh were both working under him and they were having the driving license too . While Devi Singh was working as driver from 17th July, 1981, Sultan Singh was also working on the post of vehicle driver from 31st December, 1981. Learned counsel has also argued that learned Labour Court however failed to see reason in such evidence and ignored them completely in rejecting their claim. Learned counsel has argued that the Labour Court has not correctly answered the reference especially the part of the reference on the question that if the workmen were actually discharging the duties of the post of vehicle driver then what relief they were entitled to . It was argued that the right of parity based on equal pay for equal work finds its place in fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India and protection against the exploitation under Article 23 of the Constitution of India. It was argued that the Labour Court was

not justified in completely ignoring the awards passed by the Industrial Tribunals/Labour Courts in similar cases. Learned counsel has also relied on the judgment of this Court in Rajasthan Rajya Vidhyut Prasaran Nigam Limited & Ors. vs. State of Rajasthan & Ors., reported in R.L.R.2003(1) p.686 wherein the award passed by the Labour Court granting the relief of posting and pay scale as a vehicle driver to the workmen was upheld and the benefit of same on that basis was granted to the workman Mohan Lal Solanki. Learned counsel placed reliance on a judgment of this Court in State of Rajasthan vs. Veer Bhan reported in R.L.R. 2001(1) p.27 whereby this Court on the principle of equal pay for equal work held that continuation of an employee for indefinite long period by labeling it as a stop gap arrangement and requiring him to work on higher post even though he is an appointee of a lower post should give rise to a presumption that there exist permanent work for continuation of employee and such persons should be entitled to pay of the higher post. Learned counsel also placed reliance on the judgment in Panna Lal Kumawat vs. State of Rajasthan, reported in 1992 W.L.N.(U.C.) wherein this Court has settled the principle of law that without actually according promotion, the workman is entitled to the emoluments of the posts on which he was made to discharge his duties. It has therefore been prayed that the award passed by the Labour

Court be set aside and the workmen be held entitled to appointment and salary and allowances on the post of vehicle driver upon completion of one year with effect from the date indicated in the statement of claim.

On the other hand, learned counsels for the respondents have argued that the judgment of the Hon'ble Supreme Court in Life Insurance Corporation vs. D.J.Bahadu (supra) relied upon by the petitioner would not be applicable to the facts of the present case. The award dated 22/23.4.1971 was terminated by the management u/s 19(2) of the Act of 1947. This award was replaced by another award named as Singh Sancheti Award. As per Schedule appended to this award,the post of vehicle driver was treated as technical post and its pay scale was also prescribed. It has been argued that since Singh Sancheti Award itself has been terminated on 24th June,1985 u/s 19(2) of the Act, neither of the awards therefore was in existence now. The respondents have now before this Court for the first time made a reference to the Rajasthan State Electricity Technical Workman Regulation, 1975 (for short "the Regulation of 1975") and the R.S.E.B. Employees(Emoluments) Regulation, 1978(for short "the Regulation of 1978") which were promulgated by the R.S.E.B. in exercise of powers conferred upon it by Section 79(c) of the Indian Electricity Supply Act,

1948(for short "the Act of 1948"). As per Schedule appended to the Regulations of 1975,the post of vehicle driver has been treated as Skilled "B" for which the pay scales of Rs.370-570 was prescribed by Singh Sancheti Award. In the face of this, question regarding applicability of the settlement dated 23rd April, 1971 which already stood terminated in the year 1981 does not arise. According to the respondents, service conditions of the vehicle drivers would be governed by the Regulation of 1978. Alternatively, it has been argued that the writ petitions preferred by the petitioners are liable to be dismissed on the ground of delay and latches. The cause of action to each of the petitioners had arisen in the year 1986 except in the case of workman Sohan Lal in which cause of action arose in the year 1982. No appointment orders were issued to any of the workman appointing them on the post of vehicle driver even on adhoc basis. Reference has been made to certain judgments of Hon'ble Supreme Court on the question of limitation. The respondents have relied upon the judgments of the Hon'ble Supreme Court in Indian Iron Steel Co. Ltd. vs. Prahlad Singh, reported in 2001(1) SCC p.424, Nedumgadi Bank Ltd. Vs. K.P.Madhavkutti reported in 2000, A.I.R. S.C. p.839 and Ajayab Singh vs. Sirhind Cooperative Marketing cum Processing Services Society Ltd. & Anr., reported in 1999, A.I.R.(SC) p.1351 and argued that in the event of delay in raising the dispute, claim of the workmen

should be dismissed. It has been argued that even according to para 26 of the settlement, even if the same is presumed to be applicable, though denied, the workmen were required to file appeal before the competent authority for redressal of their grievances. They have not done so . Hence the writ petition are liable to be dismissed.

I have considered the rival arguments advanced by all the learned counsel of the parties and perused the record.

In the present case, what is disturbing to note is that neither of the parties brought to the notice of the learned Labour Court the law on the question of enforceability of the settlement even after its termination by notice u/s 19(2) till it is replaced by another settlement. On a pointed query made by the Court, learned counsels fairly conceded that the aforesaid judgment of the Hon'ble Supreme Court in the case of L.I.C. of India vs. D.J. Bahadu(supra) still holds field. Learned Labour Court has decided all these cases without being cognizant of binding decision on the question of law of settlement which has been terminated by notice u/s 19(2) and has not been replaced by another settlement. Following observations of the Hon'ble Supreme Court in paras 45 to 47 on this question of law are apt:-

"45. The catena of cases we have briefly cataloged disclosed an unbroken stream of case-law binding on this Court, the ratio whereof, even otherwise, commends itself to us. The award or settlement under the I.D. Act replaces the earlier contract of service and is given plenary effect as between the parties. It is not a case of the earlier contract being kept under suspended animation but suffering supersession. Once the earlier contract is extinguished and fresh conditions of services are created by the award or the settlement, the inevitable consequence is that even though the period of operation and the span of binding force expire, on the notice to terminate the contract being given, the said contract continues to govern the relations between the parties until a new agreement by way of settlement or statutory contract by the force of an award takes its place. If notice had not been given, the door for raising an industrial dispute and fresh conditions of service would not have been legally open. With action under Section 9-A, Section 19(2) or (6), the door is a jar for disputes being raised and resolved. This, in short, is the legal effect not the lethal effect of invitation to industrial trial of strength with no contract of service or reversion to an obsolete and long ago `dead' contract of service.

46. It is inconceivable that any other alternative subsists. For instance, imagine a case where for 30 years an award or settlement might have given various benefits to employees and at the end of 30 years a notice terminating the settlement were given by the employer. Does industrial law absurdly condemn the parties to a reversion to what prevailed between them 30 years ago? If the employees were given Rs.100 as salary in 1947 and, thereafter, by awards and settlements the salary scale was raised to Rs.1000 could it be the management might, by unilateral yet disastrous action give notice under Section 19(2) or (6) terminating the settlement or award, tell the worker that

they would be paid Rs.100 which was the original contract although in law that contract had been extinguished totally by a later contract of settlement or by force of an award? The horrendous consequences of such an interpretation may best be left to imagination. Moreover, if industrial peace is the signature tune of industrial law, industrial violence would be the vicious shower of consequences if parties were relegated either to an ancient and obsolete contract or to a state of lawless hiatus. No canon of interpretation of statutes can compel the court to construe a statutory provision in this manner. We have, no doubt, that the precedents on the point, the principles of industrial law, the constitutional sympathy of Part IV and the sound rules of statutory construction converge to the same point that when a notice intimating termination of an award or settlement is issued the legal import is merely that the stage is set for fresh negotiations or industrial adjudication and until either effort ripens into a fresh set of conditions of service the previous award or settlement does regulate the relations between the employer and the employees. The court never holds justice as hostage with law as janitor? Law, if at all, liberates justice through the judicial process. Fundamental error can be avoided only by remembering fundamental values.

47. At this stage I may record my firm conclusion that for the reasons already given the settlement under the ID Act does not suffer death merely because of the notice issued under Section 19(2). All that is done is a notice "intimating its intention to terminate the award". The award even if it ceases to be operative qua award, continues qua contract. Therefore, if the ID Act regulates the jural relations between the LIC and its employees- and `if' we will presently scan- then the rights under the Settlements of 1974 remain until replaced by a later award or settlement."

Apart from above, the management for the first time has raised two arguments before this Court which although camouflaged as legal but are in fact factual arguments in substance. The first argument is that award dated 22/23.4.1971 had in fact been replaced by another award which was named as Singh Sancheti Award. According to them, in the Schedule appended to Singh Sancheti Award, the post of vehicle driver was mentioned as a technical post and its pay scale was also prescribed. They have further contended that this award has also come to be terminated by invoking Section 19(2) of the Act of 1947 on 24.6.1985. Not only this, the second factual aspect which they rather for the first time raised during the course of arguments of this writ petition is that the Regulation of 1975 were promulgated by the Rajasthan State Electricity Board in exercise of its powers conferred upon by Section 79(c) of the Erstwhile Industrial Electricity Act, 1948. As per the Schedule appended to this said Regulation, pay scale of vehicle driver was prescribed as Rs.370-520. According to the respondents this case is governed by Singh Sanceti Award which has prescribed the pay scales under the Regulations of 1978. It is all the more surprising that all these arguments have been developed during the course of hearing of the writ petition and none of them find place in reply to the writ petition . The management obviously appeared to have learnt by experience and became wiser in

course of these legal proceedings. All these aspects of law which in fact are based on the factual aspects have not received consideration by learned Labour Court. Since application of law would always depend on the facts which are proved or assumed to be proved in a given legal proceeding, it would be only appropriate that findings on such facts are secured from appropriate forum which in the present case is the Labour Court where the parties would have the opportunity to lead their evidence and substantiate their contentions in their claim and counter claim. Learned Labour Court would also have the advantage of examining the law on the question of applicability of settlement/award even after it has been terminated by invoking Section 19(2) and now after the award dated 22/23.4.1971, the management has come out with Singh Sancheti Award which also according to them stood terminated on 24.6.1985. The Labour Court would also have the opportunity to examine what is the effect of these awards and their subsequent termination.

I am not inclined to accept the argument raised by the learned counsels for the management that the claim petition in the present case should be rejected on the ground of delay alone for the simple reasons that in the present case the learned Labour Court has not rejected the claim on the ground of delay

and secondly the judgments on which reliance has been placed by the learned counsel also do not lay down any law so as to completely deny the claim. No time limit has been prescribed for making of reference but the Courts in such cases may mould if it considers it appropriate to do so and all these judgments can be cited even before the learned Labour Court for its consideration.

In the result, the writ petitions are allowed and the impugned award dated 21.4.2001 in S.B. Civil Writ Pet. No. 2596/02 and awards dated 14.2.2003 challenged in S.B.C.Writ Petitions Nos. 1408/04, 832/05,1797/04, 865/05 and 6959/03 are set aside. The matters are remanded back to the learned Labour Court with the direction to decide them afresh within a period of one year from the date of production of a copy of this order alongwith an application for revival of the proceedings filed by either of the parties.

In the facts of the case, I leave the parties to bear their own costs.

(MOHAMMAD RAFIQ),J.